


# Proposed Enforcement Policy

Public Workshop in Sacramento  
August 21, 2017



California Environmental Protection Agency

 **Air Resources Board**

# Workshop Outline

- Introduction
- Proposed Enforcement Policy
- Responses to Comments
- Next Steps



# Background

- Current penalty policy developed in 2011 in response to SB 1402
- AB 1685 (2016) increased penalties for mobile source violations
- AB 617 (2017) increased penalties for other violations.



# AB1685

- Increases maximum penalties for engines / vehicles
- May require payment of penalties as a condition for further vehicle sales in California
- May order vehicles to be returned to certified condition
- Applies penalty to each violation
- Compliance may be a condition for continued manufacturer sales of any vehicle in California



# AB 617

- Recently adopted on July 26, 2017
- Increases maximum strict liability, civil, and criminal penalties.
- Applies to wide variety of violations
  - Stationary sources
  - Air Toxics Control Measures
  - Greenhouse Gas violations



# Project Goals

- Update policy in light of increased penalties
- Focus document on policies, and expand policies to cover all enforcement activities
- Improve program transparency
- Provide full public process
- Respond to public comments



# Public Process

- Three rounds of public workshops
  - February, July, and August
- Working group
  - ~12 attendees from 12 organizations
  - Three meetings in March, June and August





# Workshop Outline

- Introduction
- Proposed Enforcement Policy
- Responses to Comments
- Next Steps





# Proposed Policy Outline

## Contents

Introduction .....	4
Enforcement Authority.....	4
Regulatory Compliance Resources.....	5
Regulation Design and Implementation.....	5
Community Support.....	6
Types of Enforcement Actions .....	6
CARB's Enforcement Process .....	7
Administrative Procedures.....	8
Penalties .....	9
Supplemental Environmental Projects.....	13
Support and Oversight of Local Air District Enforcement Programs .....	13
Public Communication and Information Protection .....	14
Appendix A: Alphabetical Listing of Enforcement Programs .....	16
Appendix B: Matrix of Regulations and Corresponding Penalties .....	20
Appendix C: Supplemental Environmental Projects Policy.....	25
Appendix D: CARB Delegated Enforcement Authority for Specified Regulations .....	29
Appendix E: California Air Resources Board Automated License Plate Reader Privacy and Usage Policy.....	31



# Differences Between Current and Proposed Policy

- Expanded Scope
- Minor Violations
- Focus on Voluntary Disclosure
- On-Going Stakeholder Public Process



# Expanded Scope: Compliance Assistance and Regulation Design

- Provide links to compliance assistance resources
- Discuss the importance of regulation design and effective outreach / implementation to achieving compliance
- Full list of each enforcement program and internet program links



# Expanded Scope: Community Support

- Specific commitments to address environmental justice
  - Outreach to EJ groups and networks to help focus enforcement
  - 50% of mobile source inspections in disadvantaged communities
  - Supporting Cal-EPA multi-media task forces
  - Describes complaints program



# Enforcement Process

- Describes the enforcement process
- Emphasizes opportunities to discuss at each point in the enforcement process
- Clarifies when a notice of violation is issued, and the content of each notice
- Describes administrative procedures and opportunities in selected programs



# Assessing Penalties

- Describes how each factor is considered in the context of each case
- Provides deterrence and investigation costs / litigation risk as additional factors to consider
- New section on minor violations
- Expanded focus on voluntary disclosure
- Descriptions of penalties by program





# Focus on Voluntary Disclosure

- Rooted in Cal-EPA criteria for voluntary disclosure
- Penalties may be reduced between 25% and 75% depending on the extent to which factors are met





# Minor Violations

- Clarifies that penalties may be reduced for cases that meet criteria
- CARB decides if a violation qualifies as minor
- Penalties may be reduced by 75% or more from assessed penalties depending on several factors



# Improving Transparency in Penalties

- Appendix B – Matrix of Regulation and Corresponding Penalties
  - Describes applicable maximum penalties by program
  - Describes range (minimum and maximum) of assessed penalties by program over past 2 ½ years.



# Expanded Scope: District Support / Oversight

- Describes CARB enforcement programs focused on stationary sources
- Highlights programs where CARB has delegated enforcement authority through MOU



# Public Communication and Information Protection

- Clarifies information clearly subject to disclosure under state law
  - Completed investigation files by request
  - Notices of violation, citations, cease and desist letters by request
  - Settlement agreements posted to website
- Describes information reported annually
- Discusses information protection
  - Confidential business information, attorney-client privilege, and pending, deliberative investigation material



# Other Changes

- Fairness previously listed as a distinct factor
  - Focused on consideration of the size of the company when determining penalties
- Fairness is discussed in multiple places in the document
  - Size of the company discussed in context of deterrence



# Workshop Outline

- Introduction
- Proposed Enforcement Policy
- Responses to Comments
- Next Steps





# Comments

- Penalty calculation methods
- Enforcement in specific programs
- Which violations qualify as minor
- Impact of compliance history on penalties
- Impact of financial burden on penalties
- Stationary source enforcement
- SEPs and fairness
- Disclosure of NOVs prior to case settlement





# Penalty Calculation Methods

- ARB should calculate penalties using a bottom-up methodology
- Response – ARB uses a top-down methodology to assess an appropriate penalty in accordance with state law and the facts and circumstances of each case.



# Enforcement in Specific Programs

- Industry asked questions about penalties in GHG programs
- Response: staff held industry-specific meetings and provided a new commitment in the policy for periodic meetings with stakeholders to discuss enforcement implementation



# Minor Violations

- Stakeholders wanted to understand which violations qualify as minor
- Response: Violation must meet criteria, but could include failure to report or reporting errors that have no impact on emissions, public health or program integrity



# Impact of Compliance History

- Stakeholders would like a more limited view of what constitutes a repeat violation
- Response:
  - Staff considers a range of factors including multiple violations, multiple violations within the same regulation, and violations of multiple regulations
  - Staff also considers the level of control between corporate entities, the size of the business, and the regulatory environment in which the company operates



# Impact of Financial Burden

- Staff should consider the impact of penalties even if the company itself is not in financial jeopardy
- Response: Staff considers ability to pay, and stakeholders should describe the impact of the potential penalty.



# Stationary Source Enforcement

- CARB and local districts should not both enforce the same violation
- Response: ARB reserves the right to pursue an enforcement action independent of an enforcement action, but due to close coordination with air districts has never had to do so.





# SEPs and Fairness

- Industry believes ARB should consider the impacts of SEPs on giving one company a competitive advantage over another
- Response: Agree





# NOV Disclosure

- Industry concerns
  - Disclosure before a case is settled is unfair, and can impact the business financially.
  - Notify a company if their NOV is released.
- Response:
  - The public interest and recent court cases may compel disclosure on request.
  - Notifying a company is not practical, but staff will add disclaimer language to every NOV.



# Workshop Outline

- Introduction
- Proposed Enforcement Policy
- Responses to Comments
- Next Steps



# Next Steps

- Make final revisions based on today's comments
- Proposed policy drafted for public comment beginning 8/25
  - Electronic submittal:  
<http://www.arb.ca.gov/lispub/comm/bclist.php>
- Board presentation in September



# Finalizing the Policy

- Make final revisions reflecting Board and stakeholder comments
- Install new internal procedures to implement the policy
- Regular meetings with stakeholders as described in the policy

